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## **Preliminary assessment of the legislative process in the Republic of Armenia**

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Published Research Report

Originally published at:

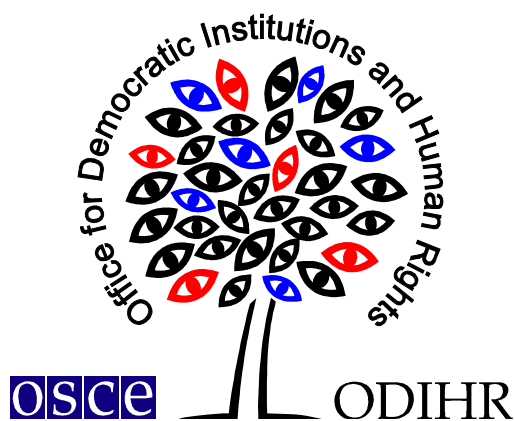
Uhlmann, Felix (2013). Preliminary assessment of the legislative process in the Republic of Armenia.

Warsaw: Organization for Security and Co-operation in Europe.

Warsaw, September 2013

Legis Paper-Nr.: 219/2012 [YA/LB]

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# **PRELIMINARY ASSESSMENT OF THE LEGISLATIVE PROCESS IN THE REPUBLIC OF ARMENIA**

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## INTRODUCTION

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### **BACKGROUND**

1. By letter of April 11, 2012, the OSCE Office in Yerevan asked OSCE/ODIHR to conduct a preliminary assessment of the legal framework governing the legislative process in Armenia (hereinafter referred to as the “*Preliminary Assessment*”). This request was based on prior discussions between the OSCE Office in Yerevan and OSCE/ODIHR on the necessity and benefits of performing an assessment of the law making procedure in Armenia. This Preliminary Assessment is based on an analysis of the existing legal framework concerning the law making process in Armenia. Its purpose is to demonstrate whether the current lawmaking procedure corresponds to key standards and OSCE commitments on democratic lawmaking, as part of the combined efforts of the OSCE Office in Yerevan and OSCE/ODIHR to provide assistance to strengthening and improving this process.
2. One desired outcome of this Preliminary Assessment could be the initiation of a wider, more comprehensive full-scale assessment of the law making procedure and practices in Armenia, according to OSCE/ODIHR’s developed methodology. Such a full-scale assessment would require an official request from the Armenian authorities, and would involve discussions with representatives of the Armenian government and legislature, as well as with practitioners and scholars familiar with the Armenian legislative practice; this would ensure a thorough analysis of legislation and practice, and the formulation of precise practical recommendations.

### **SCOPE OF THE PRELIMINARY ASSESSMENT**

3. This Preliminary Assessment describes the current constitutional, legal and organizational framework for the legislative process in Armenia and analyzes some particularly critical aspects. It should not be viewed as a full-fledged ODIHR assessment but rather as a starting point to provide assistance to strengthening and improving the legislative process in the Republic of Armenia by identifying possible weaknesses in the legislative process and suggesting ways in which they may be addressed. The Preliminary Assessment is based on an analysis of the Constitution, relevant domestic legislation and legal documents<sup>1</sup> and is thus based mainly on legal texts, not on particular knowledge or experience of the Armenian legislative practice, nor on interviews with stakeholders. However, this analysis may already reveal how certain procedures are implemented and how key principles are applied.
4. Additionally, practical issues and possible challenges to the law making process may be raised in the Preliminary Assessment, but are not covered in depth, as this would transcend the scope of this assessment. Assumptions of possible risks and challenges

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<sup>1</sup> For examples of such documents, see footnote 2 *infra*.

will stem from international experiences, rather than from direct practical experience in Armenia.

5. The Preliminary Assessment presents a detailed description of the current constitutional, legal and organizational framework of the legislative process in Armenia. It is, however, limited in scope as not all Armenian laws and secondary legislation were taken into account, but only a selection of those laws that were considered relevant for the purposes of this assessment. Furthermore, the Preliminary Assessment focuses on particularly critical aspects of the legislative process and formulates recommendations for possible improvement.
6. The Preliminary Assessment is based on unofficial English translations; errors from translation may consequently result. It is also possible that the amendments of key laws that were introduced after September 2012 have not yet been taken into account in the English translations.
7. In view of the above, OSCE/ODIHR would like to mention that this Preliminary Assessment is without prejudice to any description, analysis or written and oral recommendations and comments to the related legislation and legislative process that the OSCE/ODIHR may have the opportunity to make in the future.

#### ***MATERIALS ANALYSED***

8. Apart from various country reports on Armenia<sup>2</sup>, the Preliminary Assessment is based on non-official English translations of the following legal texts:
  - Constitution of the Republic of Armenia of July 5, 1995 (hereinafter, "the Constitution")
  - Rules of Procedure of the National Assembly, enacted by Law of the Republic of Armenia of February 20, 2002 (hereinafter, the "Rules of Procedure")
  - Law of the Republic of Armenia on Legal Acts of April 3, 2002 (hereinafter, the "Law on Legal Acts")
  - Law of the Republic of Armenia on Freedom of Information of September 23, 2003
  - Law of the Republic of Armenia on Parties of July 3, 2002
  - Law of the Republic of Armenia on Television and Radio Broadcasting of October 9, 2000

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<sup>2</sup> See "Methodische Anleitung über die Entwicklung von Entwürfen der Rechtsakte", Republic of Armenia Government Programme (Yerevan 2008), Implementation of the European Neighbourhood Policy in 2010, European Commission (Brussels, 25/05/2011), and Country report: Armenia, Supporting Policy, Regulatory and Institutional Reforms for Civil Society Development in Armenia: Existing gaps and recommendations, Counterpart International's Armenia Representation, USAID.

- Law of the Republic of Armenia on Copyright and Related Rights of June 15, 2006
  - Decree of the President of the Republic of Armenia on the Rules of Procedure of the Government of the Republic of Armenia, (hereinafter, "the Rules of Government Procedure")
9. Additionally, the following laws were taken into account:
- Law of the Republic of Armenia on Referendum of September 12, 2001<sup>3</sup> , hereinafter, the "Law on Referendum")
  - Law of the Republic of Armenia on the Constitutional Court of June 1, 2006<sup>4</sup> (hereinafter, "the Law on the Constitutional Court")
  - Judicial Code of the Republic of Armenia of February 21, 2007<sup>5</sup>

## EXECUTIVE SUMMARY

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10. The legislative process in Armenia appears to be quite fast, but at the same time highly formalized. The Government remains involved even once the legislative process has reached the Parliament. By law, many subject matters need to be regulated by primary laws passed by the National Assembly, which means that the National Assembly is under a quite high workload. There are many legal and procedural requirements that aim to enhance legislative quality. These instruments, however, are at times not sufficiently precise and may suffer – as the whole legislative process – from rigid time limits.
11. The Preliminary Assessment identifies six main areas with potential weaknesses in the legislative process and recommends the following:
- The National Assembly may consider amending rules pertaining to deadlines in the legislative process, so that time frames become more flexible, and allow for extensions.
  - The National Assembly may consider whether in future, a fast-track or extended procedure could be put in place for minor or less complex legislation respectively.

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<sup>3</sup> <http://www.parliament.am/legislation.php?sel=show&ID=1284&lang=eng>

<sup>4</sup> [http://www.concourt.am/english/law\\_cc/index.htm](http://www.concourt.am/english/law_cc/index.htm)

<sup>5</sup> <http://www.parliament.am/legislation.php?sel=show&ID=2966&lang=eng>

- The National Assembly and the Government may consider introducing a requirement that the explanatory note which must accompany a submitted draft law should disclose whether the draft law has been the subject of public consultation, and the nature of such consultation.
  - The National Assembly may consider whether Parliamentary Committees should be assigned a more active role in shaping legislation.
  - The National Assembly and Government may consider conducting in-depth regulatory impact assessments, and civil society consultations on draft laws of high importance, e.g. complex or far-reaching subject matters and on specific aspects of draft laws.
  - The National Assembly and Government may consider whether there is too much focus on primary laws, and too limited possibilities of regulating certain topics by secondary legislation.
12. In terms of the ways in which these risks might be addressed, the Preliminary Assessment's approach is also based on the consideration that any reform should be conceived by the Armenian authorities, rather than be handed down by the international community, and should be embarked upon only after a full process of consultation; only in this way can there be any confidence that the reforms will fit the specificities of the local legislative and political cultures. The Preliminary Assessment does not therefore make specific recommendations for reform, but rather identifies areas where progress is needed.

## THEMATIC ANALYSIS

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### *INTRODUCTION*

13. This Preliminary Assessment outlines a condensed version of the legislative process in Armenia, embedded in the constitutional order. It focuses on norms that determine the functioning of the legislative process and attempts to provide a brief overview of the rules defining the legislative process as a whole.
14. This Preliminary Assessment is based on written law only. The question of whether the law is applied in practice will need to be dealt with in a practical analysis. Possible discrepancies between the law and its implementation will then need to be further explored, in particular in relation to how they affect the many positive aspects of the legislative process in Armenia. One prominent example of this relates to the rule of law, which is explicitly guaranteed by the Armenian Constitution and specified in many important principles found in other laws (hierarchy of norms, non-retroactivity of laws, limitations on delegating legislative power, official publication, judicial review etc.).

15. To date, some international agencies have made efforts to compile and analyze information on the legislative process in Armenia. However, the issue has been approached from a thematic angle and there exists a need for a comprehensive assessment aimed to promote better legislative efficiency to ensure good quality, and enforceable legislation in all fields. In order for ODIHR to conduct a full scale assessment, according to its developed methodology<sup>6</sup>, an official request from the Armenian authorities is required, and ODIHR welcomes any such expression of interest. A full-scale assessment would necessarily involve re-visiting many issues contained in this Report, as well as adherence to ODIHR methodology by way of semi-structured field interviews with pre-identified interlocutors, including all governmental and parliamentary bodies involved in law-making activities. The purpose of such assessment would be to provide an illustration of the practice in the process of law making in the Republic of Armenia and recommendations on improving its efficiency and transparency. Discussions with representatives of the Armenian authorities as well as with practitioners and scholars familiar with the Armenian legislative practice would be necessary for a more thorough analysis and especially for the formulation of precise practical recommendations.
16. The following remarks highlight areas which may be particularly interesting for further analysis. These are areas that are sensitive in any democratic process, and where the law appears to sometimes lack clarity, along with other areas that may be of general interest for further study. The ensuing remarks are neither strictly distinct from one another nor exhaustive; indeed, it is possible that additional questions will arise during a practical analysis of the legislative process in Armenia.

***BRIEF OVERVIEW OF THE PROCEDURES AND INSTRUMENTS WHEREBY LEGISLATION IS PREPARED, DRAFTED, ADOPTED AND PUBLISHED***

17. The following entails a brief overview of the law-making procedure in Armenia. A more detailed description of the system, on which the thematic analysis is based, is provided in Annex 1.
18. As the supreme legal instrument of the Republic of Armenia, the Constitution of Armenia provides the general legal framework for the legislative process. New legislation may be initiated by members of the National Assembly and by the Government. When the Government initiates the process, the draft law must be accompanied by substantial documentation, including a regulatory impact assessment report and civil society consultation. If a member of the National Assembly initiates the process, these quality checks are performed after the draft law has passed the first reading.
19. All draft legislation is submitted to the Chairperson of the National Assembly. In cases where the Government initiated legislation, the Government can establish the

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<sup>6</sup> The description of the ODIHR methodology is given in Annex 2.



debating procedure; in case changes are introduced by the National Assembly, the Government can demand that only those changes that it agrees to will be voted on. Draft laws considered urgent by the Government shall be debated and voted on before the National Assembly within one month.

20. Within two days upon submission of a draft law by the Government, it is reviewed by relevant parliamentary committees; in case of several committees, the Chairperson of the National Assembly designates a Leading Committee. Draft laws initiated by MPs are forwarded to the Government and all standing committees for input (which, in the case of the Government, shall include a statement on its budgetary implications). If a draft law is initiated by one-third of the overall number of MPs, it is automatically included in the legislative agenda of the National Assembly.
21. Standing Committees provide for the preliminary review of draft laws, based on their individual rules of procedure, and with the help of sub-committees and working groups. The Leading Committee in a given case shall provide for a positive or negative evaluation of a draft law initiated by the National Assembly or the Government within one month (in urgent cases, this time is shortened to two weeks). Once the Leading Committee has returned the draft law, complete with its evaluation, to the Chairperson of the National Assembly, the latter will propose to the National Assembly to include it in the legislative agenda. Also, all MPs and parliamentary committees may forward to the Leading Committee written proposals regarding the draft law prior to the 2nd reading.
22. The first reading of a draft law has the form of an initial debate and does not leave room for voting on individual articles; it is mainly a decision on whether the legislative process will continue or not. It involves the presentation of the law, and statements by the Leading Committee and possibly other committees, followed by a debate. At the end of the first reading, based on the proposal of the drafter of the law, the majority of the National Assembly may decide to pass the draft law (with amendments proposed during the session) in the next (second) reading, or to postpone voting for another three days. If the draft law is not voted on at the end of this period, then it is considered adopted without voting.
23. The draft law adopted in the 1<sup>st</sup> reading shall be sent to the Leading Committee, other standing committees, all MPs and the Government within seven days. Upon receipt, MPs and the Government have 14 days to propose amendments, which shall be submitted to the National Assembly.
24. The second reading begins no later than one month after the draft law has passed the 1st reading. During the second reading, each amendment to the draft law is discussed and voted on individually after the entire law is put to vote. A simple majority of the members of the National Assembly present is sufficient to pass the draft law. If additional amendments are introduced during the second reading, then they are included in the text and put to a vote during a third reading of the draft law. At the

third reading, the draft law can only undergo formalistic changes, but not substantial ones.

25. Once a draft law has been passed by the National Assembly, the President has 21 days to sign and publish it, or he/she may also return the draft law to the National Assembly and demand a new debate. Debate and voting will only take place on those provisions that the President proposes to change. Any draft law remanded by the President will be treated as a priority by the National Assembly, which can accept or reject any or all of the President's suggestions and objections by majority vote. Regardless of whether the President's suggestions/objections are accepted or rejected, the President must then sign and publish the adopted draft within five days.
26. A law enters into force once it is signed by the President and published. Publication has to take place within 21 days after the adoption of the draft law by the National Assembly. However, the law itself may specify a later date of entry into force.
27. The procedure for amending the Constitution is slightly different, as this requires a referendum, which can be initiated by the President or the National Assembly. If the National Assembly initiates the procedure (which requires a majority vote), then it submits draft amendments to the President and requests him/her to initiate the referendum. The President may remand the National Assembly's draft back within 21 days with his/her suggestions and objections. If the National Assembly reintroduces the draft by at least two thirds of the total number of Deputies, the President submits it for referendum within the period determined by the National Assembly.
28. A presidential initiative for a referendum is submitted to the National Assembly, which then needs to adopt the draft amendments to the Constitution by majority vote. After the adoption, the President submits the draft for referendum on a date set by him/her. Draft amendments submitted for referendum are considered passed when they receive over fifty per cent of the votes of not less than one fourth of the number of registered voters.
29. Once laws are passed, their constitutionality can be reviewed *in abstracto* by the Constitutional Court. The right to challenge the constitutionality of legislation belongs to the President, the Government and MP groups comprising a minimum of one fifth of the total vote from the last parliamentary elections.

#### **LEGISLATIVE POWERS**

30. The legislative process generally falls within the competences of the Parliament. In Armenia, debates and the adoption of laws take place in the National Assembly, a democratically elected body.
31. At the same time, the legislative process appears to be strongly influenced by the Government. The Government may propose draft laws, prioritize them in discussion,

and prevent discussions on amendments that are not acceptable to the Government. It may also combine proposals with a motion of confidence, albeit limited in use.

32. The Government is appointed by the President after consultation with the National Assembly. The President also has a delaying veto on new legislation (and a qualitative veto on referendum). He or she may dissolve the National Assembly if the Government program is rejected twice by the National Assembly (Article 74.1 par 1 of the Constitution) or if the National Assembly fails to approve a draft law deemed urgent by Government within three months (Article 74.1 par 2a of the Constitution).
33. The Constitutional Court may invalidate laws that are in violation of the Constitution (and possibly also in cases where they are not in compliance with earlier legislation). In case of invalidation, individual acts based on that law shall remain in force; however, acts on criminal sanctions and administrative liability matters may be revisited. Invalidation enters into force immediately after the Constitutional Court decision but this may be postponed if severe consequences are expected for the public and / or the state.
34. In sum, while the National Assembly passes most laws, the influence of other bodies on the legislative process is quite substantial. This may be perfectly legitimate; especially the strong role of Government in the legislative process may provide for swift and coherent legislation. There are, however, some concerns that the National Assembly (or the opposition parties in the National Assembly) may have too little influence on key legislative decisions and that the system of checks and balances favors too strongly the President and the Government. Concerning the legislative process, one may especially ask whether the National Assembly has sufficient resources and knowledge to set the agenda for legislative debate as well as to adequately assess the content of the proposed draft laws. This question should be evaluated in greater depth on the basis of a practical analysis of the legislative process in action.

#### ***PARLIAMENTARY AND GOVERNMENTAL INITIATIVES***

35. New legislation may be initiated by members of the National Assembly and by the Government. When the Government initiates the process, the draft law must be accompanied by substantial documentation, notably a report on regulatory impact assessment (hereinafter “RIA”), the summary of comments and suggestions made to the draft in question by other executives, their acceptance or non-acceptance, with substantiation of non-acceptance. The summary shall also include accepted comments and suggestions made in the course of civil society consultation. The Government must also provide a statement regarding the effects of the new legislation on the state budget.
36. If a member of the National Assembly initiates the process, these quality checks are performed after the draft law has passed the first reading. In this case, the draft law

shall be accompanied by an explanatory note concerning the adoption of the legal act, including information on the necessity to adopt other legal acts in relation to the proposed one, as well as proposed amendments to current laws or a note confirming that the adoption of additional laws or normative legal acts in connection with the legal act in question is not required.

37. The time limits given to the National Assembly for these quality checks are extremely short: five and fifteen days for both RIA and consultation are hardly sufficient, assuming that the draft law was not previously publicized and that the consultation period is not extended. The Government may have more time than the National Assembly to conduct these important checks properly, though this is not indicated in the law, which may result in more thorough assessments when draft laws are initiated by the Government.
38. If the situation is as described, then this may lead to two different consequences. The legislative process may be typically initiated by Government, which possesses the necessary means and time to prepare draft legislation; initiatives of members of the National Assembly would then be the exception. Hence, it is possible that the right to initiate legislation by members of the National Assembly as written in the Constitution is hardly applied in practice. Such a finding may reinforce the questions concerning the role of the National Assembly as described before.
39. It is also possible that parliamentary legislative initiatives are quite common. If so, one might ask about the quality of such legislation, especially in light of the above-mentioned severe time constraints. Additionally, one must further explore the question whether members of the National Assembly (or factions or the Assembly as a whole) are properly staffed to deal with this task (each member of the National Assembly has two aides, as provided by Article 11 par 1 of the Rules of Procedure). These questions seem especially important as Committees, typically key actors of the legislative process in Parliament, are not mentioned as possible authors of parliamentary initiatives.
40. If indeed parliamentary initiatives for legislation are rare or if there are doubts as to their quality (because of a lack of time or lack of means), one should ask further whether the National Assembly has the means to oblige the Government to prepare and present legislation as requested by the National Assembly; this does not appear to be possible under the current constitutional and legal order. Such instruments would allow members of Parliament to concentrate on their key functions, i.e. to deliberate and to decide key questions related to Armenian legislation without being burdened with the details of drafting laws as well. Said instruments could also help reinforce the role of the National Assembly in relation to the Government if indeed the concern of too little parliamentary influence is confirmed by practical analysis.

**REGULATORY IMPACT ASSESSMENT AND CIVIL SOCIETY CONSULTATION**

41. As stated above, draft laws are subject to a RIA, combined with civil society consultations. Both take place early in the lawmaking process if the draft law is submitted by the Government, but relatively late – namely after the drafting process has been completed – if a draft law is submitted by a member of the National Assembly. Introducing such quality checks earlier in the legislative process could help improve the quality of legislation initiated by members of the National Assembly, e.g. if legislation would allow them to conduct a RIA or civil society consultation already in relation to a concept note on an intended draft law, if this is supported by a certain number of members and/or a parliamentary committee.
42. Also, it seems that RIA and civil society consultations are required for *every change* in legislation, at least there are no visible exceptions in the relevant law (Article 27.1 of the Law on Legal Acts). The prescribed time limits are demanding, to say the least. If RIA, conducted under substantial time pressure, is indeed a legal necessity for every draft law (and possibly for all later amendments of that law), this could possibly lead to inadequate results. Typically, if such instruments are used too often and only superficially, their value might be compromised.
43. Hence, it may be useful to analyze the practical value of these instruments. To this end, it is recommended to study the frequency of RIA and civil society consultations. Selected RIAs should be subject to a quality check. Regarding civil society consultations, an assessment should be done as to whether there is substantial and representative participation by various stakeholders in practice. It is also recommended to examine how the consultations are arranged and conducted and whether the input provided through public consultation processes is reflected, when appropriate, in the final draft through a transparent process. More specifically, the impact of both RIA and public consultations on proposed legislation should be studied, in particular the practical relevance of these tools, by comparing the versions of the draft laws before and after the RIA and public consultations were conducted.

**TIME LIMITS**

44. The parliamentary process is characterized by many time limits, which seem to usually be quite short, as pointed out in relation to RIA and civil society consultation. In general, the circulation of draft laws, as well as the deliberation and voting processes in Parliament, are likewise subject to tight schedules.
45. Sometimes, the law attaches legal consequences to the failure to comply with an obligation in time, e.g. the rule that a draft law proposed by an MP shall have no budgetary effect if the Government fails to raise this issue in time (Article 51 par 4 of the Rules of Procedure). In rare instances, the law stipulates the possibility of postponing the voting, e.g. at the end of the first reading of a draft law (Article 64 par 2 of the Rules of Procedure) or concerning the schedule of the second reading

(Article 67 par 5 of the Rules of Procedure). However, in most cases the law does not provide for an extension of the given time limit, nor does it elucidate the consequences of non-observance of the time limit.

46. The legal consequences of not respecting time limits are thus in many cases not clear. It would, however, be important to specify these whenever possible. Also, if extensions of deadlines are permitted in practice but not in the respective laws, then these laws should be amended and clarified in that respect.
47. If time limits are observed as strictly as laid down in law, it should be asked whether e.g. standing committees– which typically play an important role in shaping the outcome of plenary debates – have sufficient time to consider a draft law. More generally, practical analysis should focus on the question of whether such time constraints have a negative influence on the legislative process. Especially in the case of complex legislation, a meaningful debate in the National Assembly based on solid preparation by its members appears to be extremely difficult under such time constraints.
48. Another question that bears mentioning in this context is whether the vast amount of short time limits prevents the National Assembly from prioritizing urgent and/or important legislative projects. If every draft is subjected to the same tight schedule, the working process in the National Assembly will be basically controlled by the influx of legislative initiatives – instead of *vice versa*.

#### **SECOND READING**

49. In the National Assembly, the key debate on legislation takes place in the second reading. It is in the second reading where proposals and changes to draft laws are submitted and voted on. The second reading constitutes the essence of parliamentary debate in plenary session.
50. It should be analyzed to what extent proposals to change the draft legislation may be excluded from the debate by law, and to which extent they are excluded in practice. In the plenary session, there is a comprehensive debate on parliamentary initiatives, but the debate on draft legislation proposed by the Government is restricted, since the Government may decide to only admit such amendments as are acceptable to it. This may constitute a critical limitation of the rights of the legislator, especially if the laws discussed in the National Assembly are typically introduced by the Government. Generally, conducting debates on the substance of new laws is the role of the Parliament. If, in contrast, a Parliament may only say yes or no to new legislation (comparable to a popular referendum), its functions are severely curtailed.
51. It is also questionable whether second and third readings involving an extensive exchange of draft laws, opinions and recommendations are necessary for every draft law or whether an abrogated procedure would not suffice for minor changes to existing legislation. On the other hand, complex legislation of high importance (e.g. a

new Criminal Procedure Code or a new pension system regulation) may not undergo sufficient parliamentary debate if all remarks and proposals concerning such legislation must be introduced and listed before the second reading. There may be a need for a "free" debate or a conceptual debate before a draft law is even submitted to the National Assembly; the latter may help to prevent stillborn legislation.

52. The information list described in the Law on Legal Acts is an important step in creating new legislation. This is a list of proposals attached to the draft law in question, complete with the drafter's opinion on the proposals. It helps to structure the debate in the second reading. However, the main exchange of opinions takes place between the author of the law and the Leading Committee. It is unclear how a Deputy of the National Assembly should proceed if proposals to the draft law included in the information list form the basis for further changes to the draft law, since in this case, there appears to be no possibility for the Deputy to revisit the list and add further proposals with regard to amended versions of the draft law. As the debate in plenary session is limited to items on the information list, such proposals cannot be submitted if the author of the draft law does not include them in his or her version.
53. Finally, one might ask whether the role of the Leading Committee in the second reading – and in the overall process – is not too reactive, and, more specifically, whether parliamentary committees should not be permitted to also initiate legislation. It may enhance the overall process if committees could request additional information on draft legislation from the Government, possibly also commission a new RIA on a substantial change in a draft law, or if they would be able to initiate civil society consultations on a specific question brought up late in the legislative process. If the National Assembly wishes to strengthen its role in relation to the Government, it would be well advised to strengthen the role of the parliamentary committees.

#### ***REFERENDUM***

54. Whereas most parts of the pieces of Armenian legislation considered for this Preliminary Assessment are well-defined and unambiguous, a relatively high amount of questions and uncertainties exist with respect to the referendum process. A referendum on a law can be initiated by the National Assembly or by the Government. The Government may introduce a referendum on its own draft law only with the consent of the National Assembly. There is no reciprocal requirement that a call for a referendum by the National Assembly requires the consent of the Government.
55. Time-wise, the referendum is possible after the draft law has been approved by the National Assembly. In case of a presidential veto against the referendum, the National Assembly may overcome it with the qualified majority of votes. However, the procedure appears to be similar to the one of the presidential veto against draft laws; a decision of the National Assembly on a referendum may only take place after the third reading of the law, but not on a law remanded to the National Assembly by the President. The National Assembly may insist on a referendum by two thirds of the

total number of deputies of the National Assembly. A draft law passes the referendum when it receives over 50% of the votes by more than one fourth of the registered voters. The outcome of the referendum is subject to appeal to the Constitutional Court.

56. These matters may well be obvious to the Armenian state representatives and scholars. If not, it would be advisable to make the provisions pertaining to this process as precise as possible. Presumably, popular referendum typically take place in a politically tense atmosphere; controversies on the procedure may well erupt into a constitutional crisis, especially as the mandate of the Constitutional Court may not cover these conflicts, as, according to law, it only rules on the *outcome* of referendum (Article 100 par 3 of the Constitution). Hence, further analysis should go into the questions raised in relation to the referendum process.

#### ***EXTENT OF THE CONSTITUTIONAL REVIEW***

57. Depending on the actual practice, the scope of constitutional judicial review may be quite extensive and may include basic legal principles as well as fundamental rights guaranteed by the Constitution. It seems less clear whether the infringement of one law by another law may lead to invalidation of the latter. Such a conflict may especially arise in respect to the many rules in the Law of the Republic of Armenia on Legal Acts of April 3, 2002. One may argue that the rule of law, outlined in Article 1 of the Constitution implicates such a review; especially as many important aspects of legality are encompassed in the Law on Legal Acts, such as the hierarchy of norms or the delegation of legislative powers. However, a review of a law in respect to all existing legislation may open a wide field of invalidation, especially as older legislation prevails over newer legislation, as stipulated by Article 24 par 3 of the Law on Legal Acts.
58. If indeed all regulations in conflict with the Law on Legal Acts may potentially, if they are newer laws, be invalidated, the path to viable new legislation may be restricted, hence blocking necessary regulation. It would be helpful to analyze whether this concern is justified by pertinent case law of the Constitutional Court. However, if the Constitutional Court exercises a certain – typical – restraint, no practical problems are to be expected in this respect.

#### ***HIERARCHY OF NORMS***

59. The Armenian legislative system gives priority to laws passed earlier over more recent legal norms. This concept forces the legislator to consider possible overlaps with other laws when drafting, debating and adopting legislation; also, in order for new legislation to really change the legal situation, all relevant older laws must be amended accordingly.
60. This system has the obvious advantage that it forces the legislator to be more careful when adopting new laws. In this respect, the relevant provisions are clearly superior to clauses found in other legal systems, such as, e.g. "all existing norms not in



compliance with this law are null and void". The careful insertion of amendments into existing legislation is key to ensuring legal certainty.

61. One might ask, however, whether problems arise when the legislator simply overlooks an existing rule; in consequence, the new rule, which might be important, will not apply if it contradicts an older rule. There are exceptions to this rule, such as Article 24 par 9 of the Law on Legal Acts attributing priority of a more detailed rule over a more general rule, and Article 24 par 7 of the Law on Legal Acts attributing priority of a more beneficial over a less beneficial rule. However, the legal questions arising from this system may be quite complex. Further analysis should show whether such problems also exist in practice.

### **LEGISLATIVE STYLE**

62. In the course of this Preliminary Assessment, only a fraction of the existing Armenian legislation has been considered. A first impression finds that legislation appears to set high standards for legislative drafting. The terms used in legal texts are coherent; rigorous logic is applied whenever possible (e.g. when describing the hierarchy of laws in Article 24 of the Law on Legal Acts and Article 8 seq. of the Law on Legal Acts). The legal texts consulted provide information on different aspects of the law-making process considered in this Preliminary Assessment, and certain exceptions have been noted (e.g. the procedure of the second reading according to Article 67 of the Rule of Procedure or the norms on referendum).
63. The legal texts are likewise very *dense*. As pointed out before, this helps to answer many potential questions concerning the legislative process. However, dense legislative texts tend to be overburdened with details (see e.g., Article 21 par 8 of the Rule of Procedure (*italics added*): "The Staff shall provide the Standing Committees with the acts, adopted by the President of the Republic, by the National Assembly, by the Government, by the Constitutional Court, *and with the newspapers of the Republic of Armenia*".) Some are probably superfluous, such as Article 55 par 7 of the Rule of Procedure: "If there is a break during the discussion of the subject, the discussion shall be taken further after the break from the point it was interrupted", or Article 67 par 2 of the Rules of Procedure: "The amendments to the draft law or the package of drafts shall be made in the font different from the font of the text of the draft". Such details make legislation difficult to read and quite rigid; e.g. in case of technological changes, many details of internet publication will need to be amended. It is also possible that practice will simply find new ways of operating, which means that the law will no longer be applied in all its details anymore.
64. Dense legislation is also prone to be contradictory in some points. When preparing this Preliminary Assessment, it was at times difficult to analyze those areas that are regulated by more than one law or by more than one provision of the same law (one example for this is what exactly happens after the first reading of a law has taken place).

65. Practical analysis should go into the question of whether the problems described above seriously affect the Armenian legal system in a negative manner or whether practice easily copes with the high density of legislation.

#### ***SECONDARY LEGISLATION***

66. The law reserves many fields of public and private life for legislative activity. This reinforces the democratic legitimacy of regulation. However, it may also overburden the legislator. Practical analysis should go into the question of whether legislative power is delegated in practice, especially in light of Article 9 par 4.1 of the Law on Legal Acts stating that all questions regarding the exercise of rights of natural and legal persons shall only be regulated by law. If such delegation does not take place (or is very limited), the actual workload of the legislator might need to be subjected to further scrutiny.

### **CONCLUSIONS AND RECOMMENDATIONS**

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#### ***MAIN FEATURES OF THE ARMENIAN LEGISLATIVE PROCESS***

67. When analyzing the Armenian legislative process purely based on legislative and legal sources, as happened in this Preliminary Assessment, the general impression is that within the National Assembly, this process is swift, but highly formalized. There are many rules that impose deadlines. The Government remains involved in the legislative process in the National Assembly, by being able to respond to parliamentary initiatives and as the "author" of draft laws. It is possible that the majority of laws stem from governmental initiatives.
68. Many areas of regulation are reserved for laws; this is confirmed by the relatively high density of legal norms used for this analysis. The workload in the National Assembly is possibly quite high – which would explain the need for a highly formalized process.
69. The Armenian legal sources correctly acknowledge the importance of the preparatory work for draft laws. There are many requirements aiming to enhance legislative quality. The laws also foresee quality checks within the Government and between the National Assembly and the Government. RIA and civil society consultations are prescribed by law. These instruments, however, are not focused on particular areas of importance but apply to all laws and may suffer – same as the legislative process as a whole – from rigid time limits.
70. While taking into consideration the possibility of potentially different outcomes when assessing the lawmaking practice (as opposed to only the legal framework), and possible misunderstandings due to translation errors, one may condense this picture and the preliminary remarks made beforehand to the ensuing five primary recommendations.

***TIME LIMITS***

71. The National Assembly may consider rendering the deadlines in the legislative process more flexible. If every draft law within the National Assembly needs to be completed within the same – short – time limit and hence has the same importance, the National Assembly may have difficulties prioritizing those draft laws that it considers urgent and/or significant. The rules of procedures should provide the possibility of extending time limits, and should prescribe consequences if the deadlines are not met.

***ABROGATED OR EXTENDED PROCEDURE***

72. The National Assembly may consider whether the same legislative procedure is appropriate for every draft law. If indeed the Armenian legislator is very active, it is questionable whether three readings and an extensive exchange of drafts, comments and opinions are necessary in all cases. If a draft is of minor importance and is undisputed in substance, an abrogated procedure may be considered. On the other hand, the use of further parliamentary instruments may be considered for highly complex legislation. A "free" debate on a draft law or a conceptual discussion beforehand may help MPs concentrate on key questions and may prevent extensive legal drafting that will not survive a debate in the National Assembly.

***PARLIAMENTARY COMMITTEES***

73. The National Assembly may consider whether parliamentary committees should be assigned a more active role in shaping legislation, especially whether parliamentary committees may initiate legislation and whether they may request additional information on draft legislation from the Government. Under the current system, committees play a (possibly important but) mainly reactive role. If the National Assembly wishes to strengthen its role vis-à-vis the Government, experiences from other European countries show that it could do so best by strengthening the role of the parliamentary committees.

***FOCUSING ON REGULATORY IMPACT ASSESSMENT AND CIVIL SOCIETY CONSULTATION***

74. The National Assembly and Government may consider focusing on in-depth RIA and civil society consultations only with regard to draft laws of high importance and those regulating specific aspects of a draft law. The current application of these instruments seems too broad. A more focused use of these tools may increase the quality and the effectiveness of RIA and civil society consultations. If a focused application is envisaged, the law should specify the procedure for selecting draft laws for submission to RIA and civil society consultations and which aspects of a draft law should be subjected to an in-depth RIA.

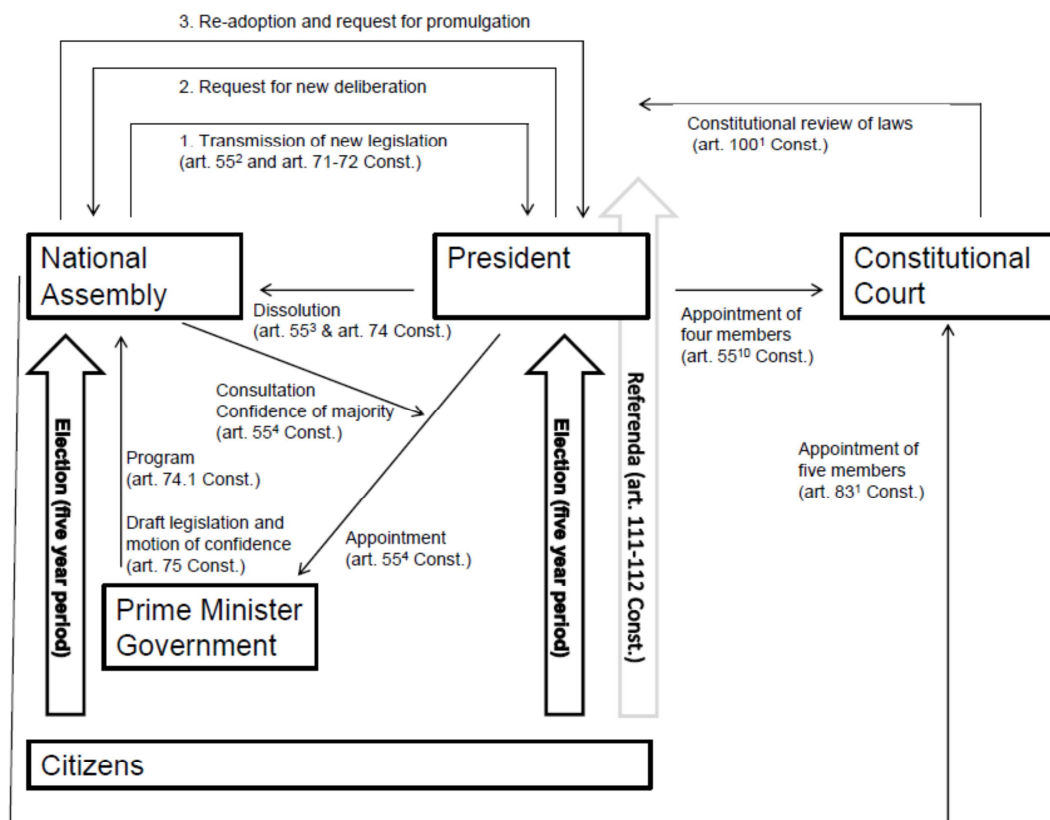
***FOCUSING LEGISLATION***

75. The National Assembly and Government may consider whether laws (primary legislation) are indeed reserved for "the most significant, typical and stable social relations" (Article 9 par 3 Law on Legal Acts) or whether its use is too extensive. Currently, legal provisions require a wide range of topics to be regulated by law (see Article 9 par 4 of the Law on Legal Acts) and foresee only limited possibilities of delegation to secondary legislation. It is, of course, fully understood that measures delegating certain topics to secondary legislation must give due consideration to the rule of law and constitutional requirements, particular when restricting fundamental rights and freedoms.

## ANNEX 1: OVERVIEW OF THE PROCEDURES AND INSTRUMENTS WHEREBY LEGISLATION IS PREPARED, DRAFTED, ADOPTED AND PUBLISHED

### 1. CONSTITUTIONAL POWERS

#### 1.1 Overview



1. The above overview depicts the basic political institutions and their interaction. Roughly speaking, the political system can be described as a *presidential system*, with similarities to the system in place in France. Many interactions between the National Assembly and the Government are orchestrated and overseen by the President. The Constitutional Court bears resemblance to the US Supreme Court, being composed of nine members and endowed with powers of full constitutional review (see *infra* pars. 56-60).
2. The citizens' main basis for democratic participation is their right to elect the President and the members of the National Assembly over a five years' period, as envisaged in Articles 50 par 1 and 60 par 2 of the Constitution. Furthermore, referendum is mandatory for constitutional amendments (Article 111 of the Constitution) and

possible for laws upon request of the National Assembly or the Government (Article 112 of the Constitution.).

### ***1.2 The President***

3. The President appoints the Prime Minister and the Government. Article 55 par 4 of the Constitution envisages that the President "shall, on the basis of the distribution of the seats in the National Assembly and consultations held with the parliamentary factions, appoint as Prime Minister the person enjoying confidence of the majority of the Deputies and if this is impossible, the President of the Republic shall appoint as the Prime Minister the person enjoying confidence of the maximum number of the Deputies". The President appoints the other Ministers based on recommendations of the Prime Minister.
4. The President may dissolve the National Assembly if it fails to approve the program of the Government twice within two months (Article 55 par 3 of the Constitution in conjunction with Article 74.1 of the Constitution). He or she may also dissolve the National Assembly on recommendation of its Chairman or the Government if it fails "to resolve on a draft law deemed urgent by the Government" or in other cases of inactivity (Article 74.1 par 2a of the Constitution). Dissolution is prohibited during a state of martial law or state of emergency, or once an impeachment procedure has been initiated against the President (Article 63 par 3 of the Constitution).

### ***1.3 The National Assembly***

5. The National Assembly is composed of 131 members and is elected for five years (Article 63 pars 1 and 2 of the Constitution). Members of the National Assembly work on a full-time basis (Article 65 of the Constitution). They may only be accused of a crime or detained with the consent of the National Assembly, unless caught in the act of committing a crime (Article 66 pars 3 and 4 of the Constitution).
6. The National Assembly passes laws and resolutions by majority vote, provided that half of the members have participated in voting (Article 71 of the Constitution; some exceptions are provided in Article 111 of the Constitution for the procedures for adopting and amending the constitution). The laws passed by the National Assembly may be subject to a presidential veto which may be overcome by the National Assembly with the majority votes of the total number of Deputies (Article 72 par 1 of the Constitution).
7. The National Assembly also oversees budget execution and usage of loans received from foreign countries and international organizations (Article 77 par 1 of the Constitution, for the indirect supervision via the Control Chamber, an independent budgetary oversight body, see Article 83 par 4 of the Constitution). It may submit questions to the Government and express its lack of confidence in the Government with a majority vote of the total number of members (Articles 80 and 84 par 1 of the Constitution).

#### **1.4 The Government**

8. The Government shall "develop and implement the domestic policy" (Article 85 par 1 and Article 89 pars 4-7 of the Constitution). It submits its "program" to the National Assembly for approval (Article 89 par 1 of the Constitution; *see also* Article 74.1 of the Constitution for possible consequences of repeated rejection<sup>7</sup>) and appoints regional governors (Article 88.1 par 1 of the Constitution).
9. The major functions of the Government are defined in Article 75 of the Constitution. It is authorized to propose legislation, it may "determine the sequence of the debate for its proposed legislation and may demand that they be voted only with amendments acceptable to it". It may also put forward a motion of confidence in conjunction with proposed legislation; the draft law will then be deemed accepted unless one third of the total number of members of the National Assembly bring forward a draft motion of non-confidence within twenty-four hours. This procedure may only be applied twice during each session of the National Assembly.
10. The Government is led by the Prime Minister (*see* Articles 86 and 87 of the Constitution), who is appointed by the President on the basis of support by the National Assembly (Article 55 par 4 of the Constitution, *see supra* par 3). The President also appoints the other ministers on recommendation of the Prime Minister (Article 55 par 4 subpar 2 of the Constitution; *see* Article 85 par 3 of the Constitution for the appointment of a Deputy Prime Minister).

#### **1.5 The Constitutional Court**

11. The Constitutional Court is a specialized court for constitutional review. It enjoys full independence (Article 94 par 1 and Article 87 of the Constitution). Its nine members are elected by the National Assembly (five members) and by the President (four members). They may not be removed and hold their office until the age of 65 (Article 96 of the Constitution).
12. The Court "shall administer the constitutional justice" (Article 93 of the Constitution, *see* Article 100 of the Constitution for a more detailed list of tasks), and determines the constitutionality of laws (*see infra* pars 56-60).

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<sup>7</sup> Article 74.1 of the Constitution vests the President with the right to dissolve the National Assembly if the latter fails to approve the Government's program twice in succession within two months. The National Assembly may also be dissolved upon the recommendation of the Chairman of the National Assembly or the Prime Minister if the National Assembly fails within three months to resolve on the draft law deemed urgent by the Government's decision or in case when during the session no sittings were convened for more than three months or the National Assembly fails to adopt a resolution on issues under debate for more than three months..

## 2. LEGISLATIVE PROCESS: LAWS

### 2.1 Definitions

13. The definitions of laws and other legal acts, as well as many of their material and procedural requirements are to be found in the *Law of the Republic of Armenia on Legal Acts* of April 3, 2002 (hereafter, “the Law on Legal Acts”). It defines “laws” as a subcategory of legal acts, stemming from the National Assembly of the Republic of Armenia (Article 4 par 1 and Article 9 par 1 of the Law on Legal Acts, in conjunction with the Article 62 of the Constitution). According to Article 2 par 2 of the Law on Legal Acts, a law must be normative (in contrast to individual and internal legal acts), meaning that it must contain at least one legal norm. The term legal norm itself is defined in Article 2 par 4 of the Law on Legal Acts as a “rule of conduct adopted by the people of the Republic of Armenia, state or local self-government bodies within the scope of their authority and in cases established by law and pursuant to procedure established by this Law, which is of temporary or permanent character, is designed for one-time or repeated application and is mandatory for everyone or selected categories or persons (but not selected individuals).” Laws may have the form of codes, which “in a systematized and structured fashion states all or fundamental norms of the law regulating similar social relations” (see Article 9 par 5 of the Law on Legal Acts).
14. A law may concern any legal relations but is designed to “regulate the most significant, typical and stable social relations” (Article 9 pars 1 and 3 of the Law on Legal Acts). As a concrete expression of the principle of the rule of law guaranteed in Article 1 of the Constitution, only laws may restrict constitutional rights (under certain strict conditions, see Article 43 of the Constitution<sup>8</sup>). More specifically, Article 9 par 4 of the Law on Legal Acts lists areas which may be regulated only by law such as restrictions on rights and freedoms of natural and legal persons, including taxes, business regulation, sanctions and liabilities, elections and referendum, state spending, political parties, and the federal organization. Delegation of powers is possible under the premises of Article 9 par 4.1 of the Law on Legal Acts (see *infra* par 60 seq.).
15. Article 3 of the Law on Legal Acts provides that a law as a legal act must satisfy various general requirements such as public adoption by the competent body as well as respect of the hierarchy of norms and of legislative technique. All laws are subject to drafting principles and quality measures (Articles 26-45 of the Law on Legal Acts). The law – as any state action – must be in accordance with basic constitutional principles such as the rule of law (Articles 1 and 5 of the Constitution), equal protection and respect of human dignity (Articles 14 and 14.1 of the Constitution), judicial protection (Article 18 of the Constitution), and respect of fundamental human

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<sup>8</sup> Article 43 of the Constitution provides that certain fundamental human and civil rights and freedoms may be temporarily restricted only by the law “if it is necessary in a democratic society in the interests of national security, public order, crime prevention, protection of public health and morality, constitutional rights and freedoms, as well as honor and reputation of others” and that these limitations may not exceed the scope defined by the international commitments assumed by Armenia.



and civil rights vested in the Constitution as well as in international treaties (Article 43 pars 1 and 2 of the Constitution). The law must also be in compliance with customary international law (Article 21 par 2 of the Law on Legal Acts).

16. In the hierarchy of legal acts, laws are second in line, being inferior to the Constitution only. All other legal acts must comply with the laws (Article 8 par 2 subpar 2 of the Law on Legal Acts). Within the category of laws, laws adopted by referendum (*see infra* par 47-53) are higher in hierarchy than ordinary laws (Article 24 par 6 of the Law on Legal Acts) and may only be amended by a new referendum (Article 112 par 2 of the Constitution).
17. In cases where laws of equal standing conflict, the older law prevails over the newer one (Article 24 par 3 of the Law on Legal Acts). A newer law, however, may establish an exception from a more general rule (*lex specialis*) (Article 24 par 9 of the Law on Legal Acts). In its application by state and municipal authorities, the newer law also prevails over the older one if it is more beneficial for natural or legal persons (Article 24 par 7 of the Law on Legal Acts). Retroactive effect of new legislation is likewise permissible when improving the legal status of an individual (*see* Article 78 of the Law on Legal Acts).

## 2.2 Legal Initiative

18. The right to initiate the legislative process is vested in the National Assembly and in the Government (Article 75 par 1 of the Constitution and Article 47 par 1 of Law of the Republic of Armenia on the Rules of Procedure of the National Assembly of February 20, 2002 (hereafter, “the Rules of Procedure”), *see also* Article 48 of the Rules of Procedure). The legal sources do not mention parliamentary committees as possible initiators of law.
19. The decision-making process within the Government before submitting a draft law is subject to the Rules of Procedure of the Government of the Republic of Armenia (hereafter, “the Rules of Government Procedure”). Resolutions of Government are adopted by a simple majority of the Ministers (Article 49 of the Rules of Government Procedure), with a casting vote of the Prime Minister if necessary.
20. Draft laws (or a package of draft laws) must be submitted to the Chairperson of the National Assembly (Article 50 par 1 of the Rules of Procedure), by the initiator, whether it is the Government or a Deputy of the National Assembly. Article 47 pars 4 and 5 of the Rules of Procedure provide that if submitted by a Deputy, the draft law shall be accompanied by a “substantiating note” (presumably an explanatory note) concerning the adoption of the legal act, including information on the necessity to adopt other legal acts in relation to the proposed one, as well as proposed amendments to current laws or a note confirming that the adoption of additional laws or normative legal acts in connection with the legal act in question is not required. Further materials

and the names of the drafters are optional (Article 47 par 4 subpar 2 subpar 1 of the Rules of Procedure<sup>9</sup>).

- 21 In addition to the above-mentioned materials, the Government must provide for a regulatory impact assessment (Article 47 par 4 subpar 1 (3) of the Rules of Procedure; *see* par 29) and "a summary sheet of comments and suggestions concerning the draft in question, its acceptance or non-acceptance [of these comments and suggestions by the drafters], with substantiation of non-acceptance; the summary sheet shall also include accepted comments and suggestions made in the course of civil society consultation" (Article 47 par 4 subpar 1 (4) of the Rules of Procedure). These rules are *lex specialis* to the more general provisions in Article 28 of the Law on Legal Acts specifying which documents shall be supplied along with draft normative legal acts. Government must also provide a statement regarding the effects of the new legislation on the state budget (Article 50 par 3c of the Rules of Procedure).
- 22 A special procedure applies if the Government combines legislation with a *motion of confidence in the Government*. The legislative process is then abrogated in so far that if the National Assembly does not immediately propose a motion of no confidence, submitted by no less than one third of the total number of Deputies and subsequently supported by more than half of the total number of Deputies (Article 75 par 4 and Article 84 par 1 of the Constitution), then the governmental legislative draft is considered adopted. Further discussion in the National Assembly will not take place; the law is directly forwarded to the President for signing (*see supra* par 9); it might be asked what role the National Assembly plays when the President executes his or her veto powers. This procedure may be applied only twice during a session in the National Assembly (Article 75 par 5 of the Constitution).
- 23 The "legal initiative" is the beginning of the legislative process within the National Assembly. The requirements in Article 47 of the Rules of Procedure make it clear that preparatory work must be done by members of the National Assembly as well as of the Government before submitting a draft law; an initiative requires a *formulated* proposal. A right to initiate the legislative process with an unformulated proposal or a concept note (*see* Article 27 par 2 of the Law on Legal Acts) requesting the preparation of a draft by the Government or Parliamentary committees or staff is not possible (such a request may not be made in the form of a resolution, *see* Article 52 of the Rules of Procedure).

### 2.3 *Drafting and Preparatory Work*

- 24 Drafting and preparatory work are regulated in Articles 26-45 of the Law on Legal Acts. Article 26 of the Law on Legal Acts reads that legislative drafting takes place within the framework of *normative legal act drafting plans* adopted by the

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<sup>9</sup> The structure of Article 47 of the Rules of Procedure seems not to be fully coherent in the translated version; other paragraphs or subparagraphs may apply.

Government and by the National Assembly – not precluding legislation not included in the plan; plans exist for the short (1-2 years) and the long term (3 and more years).

- 25 There are no procedural rules on how a Deputy of the National Assembly shall prepare a draft law. The process within the Government is regulated mainly in Articles 18 and 19 of the Rules of Government Procedure. Draft laws are submitted for the Government's consideration through Ministers or Deputy Ministers (Article 11 of the Rules of Government Procedure), encompassing basically the materials necessary to submit the draft to the National Assembly (Articles 11 and 18 of the Rules of Government Procedure). Before being introduced to the Government, the draft law must be submitted for comments and objections to the stakeholder Ministers and the Minister of Justice (Article 18 of the Rules of Government Procedure **Error! Reference source not found.**).
- 26 Complex legislation requires a *concept note* (Article 27 par 2 of the Law on Legal Acts). Article 27 par 2 of the Law on Legal Acts provides that it "shall contain a description of the relations subject to regulation and the objectives of the act to be drafted, key provisions thereof, analyze the expected consequences of application of the provisions to be drafted, and may include a tentative structure of the legal act". The concept note is an internal document for the drafters, and is not subject to approval by political bodies or experts.
- 27 Drafting is subject to the rules of legislative technique according to Articles 36-45 of the Law on Legal Acts. They encompass – *inter alia* – "clear, exact and accessible language" (Article 36 par 2 of the Law on Legal Acts), a structure of chapters, articles and paragraphs (Article 37.1 par 2 of the Law on Legal Acts), a concluding part containing a list of other legal acts to be amended or terminated (Article 37.3 par 3 of the Law on Legal Acts, *see also* Article 24 par 3 of the Law on Legal Acts), proper citation, and the avoidance of unnecessary repetition (Articles 39 and 45 par 1-2 of the Law on Legal Acts). Laws may not stipulate rules that cannot be implemented or where there are no legal consequences for non-implementation (Article 45 par 3 of the Law on Legal Acts).
- 28 Drafting work may be assigned to third parties or to several institutions by competitive procedure (Article 27 pars 3 and 4 of the Law on Legal Acts): the lawmaking body may delegate preparation of alternative legal drafts to external legal or natural persons by announcing a call for bids for the winning draft. Funding and public procurement required for such delegation are regulated in Article 30 of the Law on Legal Acts. Anybody may submit a draft law and may participate in the further debate if the draft law is properly brought into the legislative process by the Government or a member of the National Assembly (Article 27 par 5 of the Law on Legal Acts).
- 29 A draft law is subject to several quality checks. Regulatory impact assessment (RIA) is provided for in Article 27.1 of the Law on Legal Acts. It is defined as "the analysis of potential changes resulting from the adoption of a normative legal act, and in the

case of a draft law on the state budget of the Republic of Armenia ". A RIA report must contain the model applied, a timeline of anticipated consequences, and comparative statistical analysis.

- 30 RIA is conducted by "national executive authorities as determined by the Government". The RIA focuses on "estimated administration-related expenditures on the part of natural and legal persons in the area of the environment, social welfare, health care, economy, including small and medium businesses, anti-trust, anti-corruption, and budget". Further areas may be analyzed by the drafting body or third parties.
- 31 Governmental draft laws are subjected to RIA before submission to the National Assembly (Article 47 par 4 subpar 1 (3) of the Rules of Procedure) and draft laws initiated by Deputies after the first reading in the National Assembly (RIA via Government opinion, Article 27.1 par 1 subpar 2 of the Law on Legal Acts). RIA must be conducted within fifteen days (or five days in case the draft law has been adopted in first reading (Article 27.1 par 3 of the Law on Legal Acts)). It seems that every draft law is subject to RIA, irrespective of its importance.
- 32 Also – as part of the RIA process under Article 27.1 of the Law on Legal Acts – civil society consultation of the draft is provided for in par 4 of this provision. Such consultation takes place simultaneously to the RIA and is designed to "raise awareness of natural and legal persons on the draft normative legal act, as well as collecting opinions and developing on their basis [...] requisite revisions to the draft normative legal act". The draft law and related materials are published on the internet; stakeholder meetings, polls etc. are possible. The consultation process must last a minimum of fifteen days.
- 33 Articles 31 and 32 of the Law on Legal Acts provide for expert legal evaluation of a draft law by the Ministry of Justice. Legal evaluation means compliance with the Constitution and other legal acts. It takes place after the first reading of the law in the National Assembly if the law is submitted for opinion to the Government or after adoption if the law is sent to the President for signature. In conducting the review, the Ministry of Justice "shall enjoy independence and be guided solely by law". Expert legal opinion has an (important) advisory function; only the Constitutional Court may formally declare laws unconstitutional and void. Linguistic evaluations as well as other topical forms of evaluation are optional.

#### **2.4 First Reading**

- 34 A draft law properly initiated within the National Assembly must be addressed to the Chairperson of the National Assembly who will within a two-day period forward the draft to the Committees of the National Assembly, the parliamentary factions and MPs' groups as well as the Government, unless the Government is the author of the law (Article 51 pars 1a-1c of the Rules of Procedure). The Chairperson will forward a

draft law if it is in compliance with Article 47 of the Rules of Procedure, as the power to circulate draft laws is vested in the Presidency of the Parliament (Articles 18 par 1a and 50 par 1 of the Rules of Procedure; *see also* Articles 28 and 31 of the Rules of Government Procedure for the relevant internal governmental procedure). The draft law can also be submitted electronically (Article 50 par 1 of the Rules of Procedure).

- 35 The role of a "preliminary review of draft legal acts" is conferred to the committees by the Constitution (Article 73 par 2 of the Constitution). Each draft law is assigned to one Leading Committee. The number of standing committees is limited to twelve (Article 73 par 1 of the Constitution). In the committees, the political composition "must reflect the quantitative ratio of factions, deputy groups and other Deputies not included in a faction or a group" (Article 25 par 2 of the Rules of Procedure). Committees have one secretary and three experts (Article 21 par 7 of the Rules of Procedure). Their rules of procedure are regulated in Articles 26-29 of the Rules of Procedure.
- 36 The Chairperson of the National Assembly appoints the Leading Committee (Articles 30 and 51 par 1b of the Rules of Procedure) which shall make an interfacing report by rendering the conclusion of the Committee on the considered draft law; it shall submit its conclusions within thirty days of receipt of the draft law, but not before it has received the Government's and National Assembly staff's conclusions (possibly including conclusions on budgetary effects).
- 37 The National Assembly staff are held to submit these reports within twenty days after having received a Deputy's draft law (Article 51 pars 1a, 1b and 3 of the Rules of Procedure). The report of the Leading Committee must be available at least two hours before the beginning of a four-day plenary session (Article 51 par 7 of the Rules of Procedure).
- 38 The author of the draft law may participate in the debate in the Committee (Article 28 par 4 of the Rules of Procedure). Members of Parliament may submit proposals and must be informed at least three days before the meeting (Article 28 par 5 of the Rules of Procedure). The Committee may also organize a hearing (Article 32 of the Rules of Procedure).
- 39 Draft laws should be debated in plenary session no later than 30 days after the conclusions of the Leading Committee (Article 54 par 1 of the Rules of Procedure, some exceptions apply in cases of constitutional amendments and referendum). The Government may consider a draft law of high priority. Such a law must be debated and voted for within two months of the opening of the regular session (Article 51 par 6 of the Rules of Procedure). The Government may generally determine the sequence of its draft legislation submitted to the National Assembly (Article 75 par 2 of the Constitution). Priority decisions of the Government may trump the 30 days-rule of Article 54 par 1 of the Rules of Procedure, as this time limit only applies "if no other procedure is envisioned in the present law" (Article 54 par 1 of the Rules of

Procedure) – or in the Constitution. There is also a constitutional rule giving priority to the deliberation of laws remanded by the President (Article 72 par 2 of the Constitution).

- 40 The first reading has the form of an initial debate and does not leave room for voting on individual articles; it is mainly a decision on whether the legislative process will continue or not. It begins with a report of the "author" - a Deputy (Article 50 par 2 of the Rules of Procedure and Article 55 par 5 of the Rules of Procedure), or a Government representative (Article 50 par 3b of the Rules of Procedure), also called "main speaker", followed by the report of the supplementary speaker, a representative of the Leading Committee (Article 55 par 5 of the Rules of Procedure), and possibly reports by representatives from other Committees (Article 55 par 5.1 of the Rules of Procedure), an exchange of opinions, final speeches of the supplementary speaker and main speaker, and a vote (Article 55 par 4 of the Rules of Procedure in conjunction with Article 64 par 1 of the Rules of Procedure). In his/her final speech, the main speaker (author) can either make changes to the draft law and propose to pass the law in second reading, or postpone the voting (Article 64 par 2 of the Rules of Procedure). In the latter case, the voting will be postponed until the end of the next three-day session in order to make the relevant amendments to the draft law or the package of drafts. If, after expiration of this time period, no such vote takes place, the law will be considered adopted without voting. The motion to pass the law in second reading or the proposal to postpone the voting must be supported by a majority of deputies participating in the voting (a quorum is reached by participation of half of the deputies) (Articles 71 of the Constitution and Article 60 par. 1 Rules of Procedure).

## **2.5 Second Reading**

- 41 After the first reading, Government and Deputies may propose changes to the draft law within a period of 14 days. The proposals are addressed to the National Assembly staff, who within 24 hours forwards these proposals to the author of the draft law and the leading Committee (Article 66 par 2 of the Rules of Procedure). The author must create a list of proposals and add his or her opinion on them (information list). This list must be forwarded to the Leading Committee within 30 days (Article 67 par 1 of the Rule of Procedure), which will in turn form an opinion on the proposals. The Committee's conclusions must be transmitted to the Chairperson of the National Assembly within a period of 14 days in order to schedule the second reading (Article 67 par 4 of the Rules of Procedure). On recommendation of the author of the draft law or the Leading Committee, the National Assembly may adjust the schedule (Article 67 par 5 of the Rules of Procedure).
- 42 The second reading basically follows the rules of the first reading. Questions may be raised only by authors whose proposals were included in the information list (*see* Article 69 of the Rules of Procedure). First, the plenary votes on the whole text of the draft law (with those suggestions which the author deems acceptable). If this vote

fails, each proposal is voted and decided on separately (*see* Article 69 pars 5 and 6 of the Rule of Procedure<sup>10</sup>).

- 43 However, there is at least one substantial exception: according to Article 75 par 2 of the Constitution the Government "may demand that [draft legislation is] voted only with amendments acceptable to it", as regards legislation proposed by the Government.

## 2.6 *Third Reading*

- 44 After the second reading, the draft law is edited by the author and the Leading Committee within 30 days; changes in substance are not permissible (Article 71 par 1 of the Rule of Procedure). The edited text along with an information list outlining the changes made is presented to the Chairperson of the National Assembly and put to a third and final vote in the National Assembly (Article 72 of the Rules of Procedure); a debate on individual provisions is not possible. However, the author of the law may take the draft law back to the stage of the second reading and prepare a new information list if it fails to receive the necessary votes for adoption. If not, the draft law is rejected and removed from circulation (Article 72 par 4 of the Rules of Procedure)

## 2.7 *Presidential Veto*

- 45 The adopted law is transmitted to the President within ten days (Article 72 par 5 of the Rules of Procedure). Within 21 days (Article 55 par 2 of the Constitution; Article 72 par 5 of the Rules of Procedure) the President signs the law or remands it with objections and recommendations to the National Assembly.
- 46 Remanded laws must be deliberated in the National Assembly as a priority (Article 72 par 2 of the Constitution); they shall be "included in the agendas of the regular series of sessions and the pending four-day sittings and be put to extraordinary debate" (Article 73 par 1 of the Rules of Procedure). Members of the National Assembly may propose changes connected to the presidential recommendations (Article 73 par 1 of the Rules of Procedure). The procedure follows the rules of the first reading of a draft law, except that a representative of the President now acts as the main speaker of the law (Article 73 par 3 of the Rules of Procedure); only the presidential representative may allow changes to the presidential amendments. If the presidential version of the law fails to gather the necessary votes, the National Assembly may adopt the law in its original version (Article 73 par 8 of the Rules of Procedure). The presidential veto thus has only *delaying effect*. The National Assembly may pass the law again with a majority of votes in the National Assembly, provided that more than half of the total number of Deputies has participated in voting (Articles 71 and 72 of the Constitution) – this is the generally applicable voting mode in the National Assembly (Article 60

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<sup>10</sup> The wording of this provision appears to be difficult for understanding, although the difficulty may stem from the translation

par 1 of the Rules of Procedure). A re-adopted law must be signed by the President within five days (Article 55 par 2 of the Constitution, Article 73 par 8 of the Rules of Procedure).

## 2.8 *Referendum*

- 47 Laws may be subjected to popular referendum. A referendum on a law can be initiated by the National Assembly or by the Government (Article 112 par 1 of the Constitution and Article 8 par 1 of the Law on Referendum) – but not by the President.
- 48 The Government may introduce a referendum on its own legislation only with the consent of the National Assembly; Article 8 par 5 of the Law on Referendum speaks of "approval of the National Assembly": "[w]ithin two days after receiving the draft law introduced by the Government, the President of the Republic introduces the draft to the National Assembly to receive the approval of the National Assembly to submit it to referendum.". There is no reciprocal requirement that a call for a referendum by the National Assembly requires the consent of the Government.
- 49 Time-wise, the referendum is possible after "approving the draft law according to the Law of the Republic of Armenia's 'National Assembly Rules of Procedure'" (Article 8 par 2 of the Law on Referendum), by the National Assembly. In case of a presidential veto, the National Assembly may even "approve" the law after such a veto has been declared. However, the procedure provided for in Article 8 pars 3-6 of the Law on Referendum appears to be similar to the one of the general presidential veto against draft laws (*see supra* pars 45-46), which indicates that a decision of the National Assembly on a referendum may only take place after the third reading of the law, but not on a law remanded by the President.
- 50 A referendum requires the majority vote of the total number of Deputies (Articles 111 par 2 and 112 par 1 of the Constitution). A law submitted for referendum to the President may be remanded by the President for reexamination within 21 days (Article 8 par 3 of the Law on Referendum). The National Assembly may insist on a referendum by two thirds of the total number of Deputies of the National Assembly (Article 8 par 4 of the Law on Referendum).
- 51 The referendum has to be called by the President within 21 days after the National Assembly has requested, approved or confirmed the referendum (Article 8 par 7 of the Law on Referendum). It shall take place not earlier than 45 days and not later than 60 days after the publication of the President's decree; the law must be published at least 30 days before the referendum takes place (Article 8 pars 8 and 9 of the Law on Referendum).
- 52 The referendum process is mainly in the hand of special commissions (see Articles 9-16 of the Law on Referendum). The political process preceding the vote is reserved to citizens, parties and non-governmental unions (Article 20 par 1 of the Law on Referendum). They may also observe the voting process, together with international



organizations, representatives of foreign countries and NGOs (Article 22 of the Law on Referendum). Campaigning of government entities is prohibited (Article 20 par 5 of the Law on Referendum).

- 53 A draft law passes the referendum when it receives over 50% of the votes by more than one fourth of the registered voters (Article 113 of the Constitution). The outcome of the referendum is subject to appeal to the Constitutional Court (Article 100 par 3 of the Constitution).

## **2.9 Publication**

- 54 A new law is published by the President (Article 55 par 2 of the Constitution, Article 73 par 8 of the Rules of Procedure). Publication is mandatory (Article 48 par 1 of the Law on Legal Acts). New laws are to be found in the *Official Bulletin* (see Articles 62 and 64 of the Law on Legal Acts for details).
- 55 A law comes into force as specified therein (Article 48 par 2 of the Law on Legal Acts) or, if such a provision missing, 10 days after publication if the law concerns obligations and status of legal and natural persons (Article 46 par 2 subpar 3 of the Law on Legal Acts).

## **2.10 Judicial Review**

- 56 Adopted laws are subject to judicial review. The Constitutional Court determines the compliance of laws with the Constitution (Article 100 par 1 of the Constitution). The Constitutional Court provides for constitutional review of the law itself ("abstract review") as well as for the law applied in a specific case. The former process shall be initiated by state bodies, the latter is open to private parties (Law of the Republic of Armenia on the Constitutional Court of June 1, 2006 (hereafter, "the Law on the Constitutional Court"), see especially Articles 68-69.).
- 57 Articles 100 and 101 of the Constitution envisage that the abstract review of laws can be initiated – *inter alia* – by the President, one-fifth of the deputies of the National Assembly, the Government, and the Human Rights' Defender concerning laws allegedly infringing human rights. Article 68 par 7 of the Law on the Constitutional Court provides for some guidance as to how the Constitutional Court should approach these cases, such as considering the time of adoption, the necessity of the protection of fundamental rights, the principle of separation of powers, or the necessity of ensuring the direct application of the Constitution. Article 86 of the Law on Legal Acts, which concerns the interpretation of a legal act, also applies. The Constitutional Court may invalidate the challenged law or parts of the law (see Article 68 par 8 subpar 2 of the Law on the Constitutional Court). In case of invalidation, Article 68 par 10 of the Law on the Constitutional Court provides that individual acts based on that law shall remain in force; however, acts on criminal sanctions and administrative liability matters may be revisited (Article 68 par 13 of the Law on the Constitutional Court). Article 102 pars 2 and 3 of the Constitution state that invalidation enters into force

immediately after the Constitutional Court decision but also that this may be postponed if severe consequences are expected for the public (see Article 68 pars 15-17 of the Law on the Constitutional Court for details).

- 58 A review of the constitutionality of laws, when applied in a specific case, may be initiated not only by the aforementioned state institutions (Article 68 par 1 of the Law on the Constitutional Court) but also by citizens: an application to the Constitutional Court may be lodged by "every person in a specific case when the final judicial act has been adopted, when the possibilities of judicial protection have been exhausted and when the constitutionality of a law provision applied by the act in question is being challenged" (Article 101 par 6 of the Constitution). Such a complaint must be submitted to the Constitutional Court no later than six months after the exhaustion of all other legal remedies (Article 69 par 5 of the Law on the Constitutional Court). The National Assembly acts as respondent as the body that adopted the disputed legal act in such proceedings (Article 69 par 3 Law on the Constitutional Court).
- 59 In the case of individual complaints, the proceedings start with an admission procedure (Article 69 pars 6-10 of the Law on the Constitutional Court; see also Articles 30-32 of the Law on the Constitutional Court). The procedure before the Constitutional Court is regulated in Articles 35-67 of the Law on the Constitutional Court. Parties have access to the Constitutional Court's material regarding the case (Article 47 par 1 of the Law on the Constitutional Court). Hearings are public (Article 22 of the Law on the Constitutional Court), with some limited exceptions (Article 22 par 3 of the Law on the Constitutional Court).
- 60 The examination by the Constitutional Court clearly includes a review of basic legal principles as well as fundamental rights guaranteed by the Constitution (*see* Articles 1-44 of the Constitution). A law which is inconsistent with these constitutional rights will thus be declared wholly or partly invalid. However, it is less clear whether infringements of one law by another law may also lead to invalidation. Such a conflict may especially arise with respect to the many rules in the Law on Legal Acts. One may argue that the rule of law (Article 1 of the Constitution) implicates such a comparative legal review; especially as many important aspects of legality are encompassed in the Law on Legal Acts, such as the hierarchy of norms or the delegation of legislative powers (*see supra* par 14). However, the obligation to review a law with respect to all existing legislation may open a wide field of legislation for invalidation, especially as, in case of conflicting legislation, legislation passed earlier prevails over newer legislation (Article 24 par 3 of the Law on Legal Acts).

### 3. LEGISLATIVE PROCESS: THE CONSTITUTION, SECONDARY LEGISLATION, INTERNATIONAL TREATIES

#### 3.1 *The Constitution*

- 61 Revision of the Constitution requires a referendum which may be initiated by the President or the National Assembly (Article 111 par 1 of the Constitution). The processes for the adoption of a completely new constitution and for constitutional amendments are practically identical. The process is likewise similar to the one for referendum on laws (see *supra* pars. 47-53).
- 62 As with the process for laws, the President may veto and remand a draft constitutional provision to the National Assembly (Article 111 pars 2 and 3 of the Constitution); his or her veto may be overcome by the National Assembly by two thirds of the total number of members of the National Assembly (Article 111 par 4 of the Constitution, see also *supra* pars 45-46). Proposals of the President require the majority of the total numbers of members of the National Assembly before they may be submitted to a referendum (Article 111 par 5 of the Constitution).
- 63 Article 1 (rule of law), Article 2 (democracy) and Article 114 (safeguarding provision) of the Constitution are exempt from any possible revision (Article 114 of the Constitution and Article 4 par 2a of the Law on Referendum). Article 4 pars 2b-2c of the Law on Referendum extend this restriction to " issues of prolonging or reducing the powers of incumbent President and incumbent National Assembly as well as incumbent state and local self-governing bodies" and to " issues related to human and citizens' rights, freedoms and obligations, the elimination or restriction of constitutional guarantees providing their implementation, as well as issues directly bestowed to the exclusive competence of state and local self-governing bodies."

#### 3.2 *Secondary Legislation*

- 64 The National Assembly, the President, the Government and other state bodies may adopt normative legal acts, i.e. regulation on the sub-legislative level. Such regulation must not concern areas which are reserved to primary laws (Article 9 par 4 of the Law on Legal Acts); it has to remain "within the limits expressly provided for by law" and may not contain additional restrictions of rights of natural persons or contain additional obligations.
- 65 Apart from laws, the National Assembly may pass *resolutions* (Article 4 par 1 and Article 12 of the Law on Legal Acts). In contrast, regulations passed by the President have the form of a decree (Article 56 of the Constitution and Article 13 par 4 of the Law on Legal Acts), while regulations passed by the Government are issued in the form of resolutions (Article 14 par 4 of the Law on Legal Acts). In the legal hierarchy, decrees may not contradict laws and resolutions of the National Assembly, while resolutions of the Government may not contradict laws passed by referendum, other laws, resolutions of the National Assembly and decrees of the President (Articles 12-

14 of the Law on Legal Acts). This leads to the following top to bottom hierarchy: the Constitution, laws passed by referendum, laws, resolutions of the National Assembly, decrees of the President, and resolutions of the Government.

### **3.3     *International Treaties***

- 66     The President is responsible for international relations (Article 55 par 7 of the Constitution). He/she recommends international treaties for ratification to the National Assembly (Article 81 par 2 of the Constitution). Ratification by the National Assembly is required for treaties, that "are of political or military nature or stipulate changes of the state borders", "relate to human rights, freedoms and obligations, "stipulate financial commitments for the Republic of Armenia", or lead to legislative activity (Article 81 pars 2a-2d of the Constitution). Other agreements can be directly concluded by the President (Article 55 par 7 of the Constitution).
- 67     International treaties, as well as customary international law, are directly applicable legal sources in Armenia (Article 21 par 2 of the Law on Legal Acts). In the hierarchy of laws, international treaties have the same level as other legal acts issued by the body signing or ratifying the treaty in question (Article 21 par 4 subpar 1 of the Law on Legal Acts). In case of conflict between a national and the international rule adopted by the same body, international law prevails (Article 21 par 4 subpars 2 and 3 of the Law on Legal Acts).

## ANNEX 2: THE BASIS FOR OSCE/ODIHR's LAWMAKING REFORM ASSISTANCE ACTIVITIES

In the transition countries<sup>11</sup>, efforts to improve the quality and the effectiveness of their legislation have been assisted in a sporadic and fragmentary manner with a variety of understandings of the notions involved, and a wide typology of activities associated with these notions. Little work was done in terms of methods for supporting these efforts, whilst considerable resources have been devoted to the building or strengthening of institutions involved in law-making. The most comprehensive attempt to take stock of law drafting practices in selected countries and to point out crucial issues to be considered when creating or reviewing regulations on law drafting was conducted under the SIGMA programme<sup>12</sup>, a joint initiative of the European Union and the Organization for Economic Co-operation and Development<sup>13</sup>. Created in 1992 with a focus on EU candidate countries<sup>14</sup>, this programme has provided support to decision-makers and public administrations in their efforts to modernize “public governance systems.” Within this overall framework, a project aimed at helping the countries to improve their law drafting methodology and techniques was launched in 1996<sup>15</sup>. Efforts to improve the quality and the effectiveness of legislation have also been supported, though on a lesser scale, by the Council of Europe's Law-making Project<sup>16</sup>.

For long, the primary focus of OSCE/ODIHR's assistance was on providing ad hoc legal advice on individual pieces of legislation, when the process of their drafting and consideration was ongoing. While doing so, OSCE/ODIHR recurrently noted that some of the shortcomings identified in the texts found their cause in the manner in which the legislative process was managed or regulated. Therefore, specific recommendations related to procedural matters, including mechanisms for making the process more transparent and more inclusive or for monitoring the implementation of legislation, have been made to the legislators with varying degree of success. Experience has shown that the most effective laws are the result of a legislative process, which is managed in its entirety, operates on the basis of a set of comprehensive, uniform and coherent rules, and allows for consultations with those to be

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<sup>11</sup> The term “transition country” broadly refers here to countries undergoing a comprehensive process of political and/or economical transformation.

<sup>12</sup> SIGMA – Support for Improvement in Governance and Management in Central and Eastern Europe.

<sup>13</sup> For more information on this programme, refer to: [https://www.oecd.org/pages/0,2966,en\\_33638100\\_33638151\\_1\\_1\\_1\\_1,00.html](https://www.oecd.org/pages/0,2966,en_33638100_33638151_1_1_1_1,00.html) (last visited 15 March 2006)

<sup>14</sup> Ten of the countries with which SIGMA has been working on law drafting and regulatory management issues since 1996 are now EU Member States. Since 2001 the Programme has been assisting countries of the Western Balkans in building their public institutions and systems in the framework of the Stabilisation and Association Process (SAP) agreed with the EU.

<sup>15</sup> SIGMA Paper No 18, *Law Drafting and Regulatory Management in Central and Eastern Europe* (1997) - OECD.

<sup>16</sup> For more information on this project, refer to: [http://www.coe.int/T/E/Legal\\_Affairs/Legal\\_cooperation/Law\\_making/](http://www.coe.int/T/E/Legal_Affairs/Legal_cooperation/Law_making/) (last visited 15 March 2006)

affected by the legislation or responsible for its proper enforcement. There was an obvious need to look beyond individual pieces of legislation and interview those involved in the process with a view to getting an overall picture of a particular country's entire legislative process, including the structure and interaction of the institutions involved. In this endeavour, particular attention was to be given to the concept of 'legislative transparency', which is specifically referred to in two key OSCE documents<sup>17</sup>, and to take into consideration recommendations or special interests manifested in discussions that took place in OSCE Human Dimension Implementation Meetings in 2002, 2003 and 2004 as well as at the 2004 Human Dimension Seminar on Democratic Governance. Among these recommendations, it is worth recalling the following<sup>18</sup>:

- a. Access to laws and legislative documents, including primary and secondary legislation, court rulings, draft laws and legislative agendas, should be ensured.
- b. Legislative proceedings should be open to the public.
- c. Legislative transparency should be fostered at all levels of governance, including local self-governance.
- d. Public consultation should be an indispensable element of legislative process. Both legislatures and the executive branch should encourage public consultation.
- e. Parliamentary proceedings, including committees meetings, should be open to the public.
- f. Minutes and records should be entirely available to the public. Reading rooms and internet could be used to this end.
- g. The ODIHR's legislative assistance work should pay greater attention to the underlying attitudes and factors that affect the way laws are prepared and drafted and should place more emphasis on promoting citizen participation in the political process besides elections.
- h. The OSCE's work with legislatures should be expanded. An inventory of standards related to structures, procedures and practices of democratic parliaments should be developed.
- i. To promote strengthening of democratic practices within parliaments of the

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<sup>17</sup> *Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (...) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone;*" (paragraph 5.8, Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, 1990). *"Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives"* (paragraph 18.1, Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE, 1991).

<sup>18</sup> These recommendations are extracted from the original documents.

participating States, the OSCE should assist with the development of rules of procedure and legal frameworks.

- j. The ODIHR should provide assistance to participating States with regard to law drafting in a decentralized state structure, with focus on specifics of enforceability issues at the local level.

The purpose of a comprehensive assessment of the lawmaking system assessment is to collect, synthesize and analyze information with sufficient objectivity and detail to support credible recommendations for reform in the area in question. Information for the assessment is collected through semi-structured field interviews with pre-identified interlocutors, as well as through compiling relevant domestic legislation and regulations. The field interviews are preceded by the sending out of questionnaires to the intended interlocutors in order to provide a better overview of the purpose and scope of the visit and to allow time for preparation. The interviews aim at gathering information on the procedures and practices in place, as well as on the international assistance efforts in this and related areas.

The information gathered through field interviews and the collection of domestic laws and regulations is then analyzed in the light of generally accepted international standards in relation to legislation. There are two types of standard in particular which are relevant to the current assessment: ‘system standards’, i.e. the standards expected of law making systems, and ‘standards for regulatory instruments’, i.e. the standards expected of individual legislative instruments themselves. The former encompass:

- Coherence, consistency and balance between competing policies;
- Stability and predictability of regulatory requirements;
- Ease of management and oversight, and responsiveness to political direction;
- Transparency and openness to the political level and to the public;
- Consistency, fairness and due process in implementation;
- Adaptation to changing circumstances.

The latter encompass:

- user standards, e.g. clarity, simplicity and accessibility for private citizens;
- design standards, e.g. flexibility and consistency with other rules and international standards;
- legal standards, e.g. structure, orderliness, clear drafting and terminology, and the existence of clear legal authority for action;

- effectiveness standards, e.g. relevance to clearly defined problems and real-world conditions;
- economic and analytical standards, e.g. benefit-cost and cost-effectiveness; measurement of impacts on business, competitiveness and trade;
- implementation standards, e.g. practicability, feasibility, enforceability, public acceptance and availability of necessary resources.